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Nos. 82-354, 82-355, 82-398

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., *et al.*,
Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF AMICI CURIAE AMERICAN COLLEGE OF PREVENTIVE MEDICINE AND AMERICAN PUBLIC HEALTH ASSOCIATION

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INTRODUCTION

The American College of Preventive Medicine and American Public Health Association submit this brief Amicus Curiae in opposition to Petitioners' Writ of Certiorari to the United States Court of Appeals for the District of Columbia in the belief that the granting of

the Writ will have a profound and irreversible effect by bringing about certain death and injury to a significant number of individuals through further delay in the implementation of certain auto safety measures. Specifically, Amici opposes a final order of the Department of Transportation (DOT) and its National Highway Traffic Safety Administration (NHTSA) which was issued on October 23, 1981 (46 Fed. Reg. 53419 (October 29, 1981)) and which rescinded the passive restraint provisions of Federal Motor Vehicle Safety Standard ("FMVSS") 208. The written consent of the parties to this action to file this brief are on file with the Clerk of the Court.

The American College of Preventive Medicine is a national medical society composed of over 2,000 individual physician members. One of the objectives of the organization is to "foster education and protection of the public regarding health promotion and disease prevention." The College has consistently and publicly stated its position of support for FMVSS 208 and the passive restraint provisions thereof.

The American Public Health Association is a non-profit professional society with a combined national and affiliate membership of over 50,000 health professionals throughout the United States. Founded in 1872, the APHA works to promote personal and environmental health by setting standards for alleviating health problems, launching public campaigns about specific health dangers, and publishing numerous materials reflecting the latest findings and developments in public health. For decades, the APHA has maintained an active interest in automobile safety. When the Administrator of the National Highway Traffic Safety Administration held hearings in August 1981 to consider the future of the passive restraint standard, the APHA presented testimony opposing the abandonment of passive restraints because of their potential for saving lives and preventing serious injury.

Amici represent the public as well as certain classes of individuals. They represent those who will be ultimately and perhaps most greatly affected by the judgment of the Court in this matter. The mandate of the Department of Transportation and its National Highway Traffic Safety Administration is to serve the public by promoting traffic safety. Members of the public who are physicians and health professionals such as the members of Amici are those who will experience first-hand the consequences of governmental action in the area of motor vehicle safety.

DISCUSSION

According to the latest available data (1977), motor vehicle accidents are the fifth leading cause of death in this country, and are the leading cause of death for persons in the age bracket of 1-24 years. In 1978, 51,500 persons died in motor vehicle accidents, of which approximately 28,000 were front seat occupants. An additional two million persons suffered disabling injuries in 1978 as a result of motor vehicle accidents.

This translates to the following morbid statistics: every 10 minutes someone dies in a traffic accident; injuries, many of which are the major cause of paraplegia, epilepsy[1] and cerebral palsy, are sustained at the rate of one every 8 seconds; the number of persons killed each day, 140, is the equivalent of a major airline crash.

The economic costs of motor vehicle accidents are equally staggering, from $24.3 billion to $29.3 billion per year in

[1] Head injury due to automobile accidents is the leading cause of epilepsy in adults. It is also one of the most preventable causes of epilepsy. The National Commission for the Control of Epilepsy and Its Consequences ("the Commission"), in its 1977 report to the President and Congress, estimated that motor vehicle accidents in the United States account for disabling injuries to more than 1.8 million persons per year, 540,000 of these being injuries to the head. The Commission found that approximately 20,000 of these cases develop epilepsy.

1981 dollars for all injuries and fatalities and from $15.8 billion to $18.9 billion in 1981 dollars per year for accidents involving front seat occupants.[2]

It was in response to this carnage and waste that the National Traffic and Motor Vehicle Safety Act was enacted in 1966. Among other things, the Act established the National Highway Traffic Safety Administration within the Department of Transportation and authorized the Secretary of Transportation to establish appropriate motor vehicle safety standards.

The motor vehicle standard which is the subject of this controversy, FMVSS 208, was promulgated in 1967 and originally required all automobiles manufactured and sold in the United States to be equipped with lap and shoulder belts. In 1977 the standard was amended to mandate passive restraint seat belt systems beginning with model year 1981 automobiles.

As the Court below correctly found, the government's basis for rescission of the passive restraint provisions of FMVSS 208, "[b]y any measure of reasoned decisionmaking . . . was arbitrary and capricious." State Farm et al. v. Department of Transportation et al., 680 F.2nd 206, 239 (D.C. Cir. June 1, 1982). Furthermore, in issuing its order as it did, the Court recognized the danger of simply remanding the petition to the agency, as threatening to allow "recalcitrance . . . (to) succeed where rational decisionmaking might not." 680 F.2nd 206, 241 (D.C. Cir. June 1, 1982). It is this concern which prompts Amici's opposition.

As it existed prior to the rescission order, FMVSS 208 represented years of research, analysis and litigation and was a reasoned balance of all interests at stake. Judi-

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[2] See *Comments of William Nordhaus on Notice of Proposed Rulemaking on Federal Motor Vehicle Safety Standards Occupant Crash Protection*, NHTSA Docket No. 74-14, Notice 22, May 26, 1981, Table A-2.

cial action has already meant delay in the implementation of this important rule for at least one year, and most likely for a greater period of time. Further consideration would only serve to impose greater delay, at enormous human and economic cost both to society and individuals who will be automobile accident victims.

The major justification for imposition of the passive restraint provisions was the low rate of usage of active systems, which was estimated at the time to be from 10 to 20 percent. In promulgating the passive restraint provisions in 1977, the DOT assumed that usage of seat belts would increase 50 percent as a result of the standard, to from 60 to 70 percent. Based on this estimation, DOT calculated that passive restraints would prevent 9,000 deaths and 65,000 injuries per year. Recent studies have calculated net economic benefits of the standard at $2.4 billion per year.[3]

This earlier approximation of lives saved and injuries averted has since been dramatically revised downward by the government to the point that in its October analysis (46 Fed. Reg. 53419 (October 29, 1981)) NHTSA implicitly discounted nearly totally the effect of the passive restraint provisions in stating:

> "The agency's analysis of the public comments and other available information leads it to conclude that it cannot reliably predict even a 5 percentage point increase as the minimum level of expected usage increase." 46 Fed. Reg. 53419, at 53423 (October 29, 1981).

The Court of Appeals, in its decision, found that this sudden and dramatic re-estimation by the government was not based upon reasoned decisionmaking. Of equal

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[3] See *Comments of William Nordhaus on Notice of Proposed Rulemaking on Federal Motor Vehicle Safety Standards Occupant Crash Protection*, NHTSA Docket No. 74-14, Notice 22, May 26, 1981.

concern to Amici is the fact that estimates by others have been substantially greater. Among others, Professor Nordhaus has estimated that a one year delay would result in approximately 3,000 additional deaths and 60,000 injuries. Nordhaus Comments, *Id.* The central fact remains that, absent a passive restraint requirement, many individuals will die and many more will be maimed and injured. It is the dedication of the members of Amici to the prevention of such suffering which prompts their concern.

CONCLUSION

As the statistics demonstrate, while credible estimates of severity may vary, there is consensus that FMVSS 208 has substantial public health consequences and has very real meaning for the lives of those affected. Further delay in implementation of this rule, which has to date withstood considerable challenge, will therefore bring about consequences which will clearly be irreversible. For this reason, Amici respectfully submit that Petitioners' Writ of Certiorari should be denied.

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